

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6584 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

REVANDAS NANJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6584 of 2001
MR NM KAPADIA for Petitioner No. 1
MR K.L. PANDYA AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/12/2003

ORAL JUDGEMENT

1. Heard learned counsel Mr. N.M.Kapadia for the
petitioner and learned A.G.P. Mr. K.L. Pandya for the

respondent-State.

2. By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, direction or order in terms of sub paras (a) and (b) of para 5 of the petition and for the sake of brevity and convenience, I would like to reproduce the same.

"5. Under the aforesaid facts and circumstances of the case, the petitioner, therefore, pray that Your Lordships will be pleased to :-

(a) To issue a writ of mandamus or any other appropriate writ, order or direction in the like nature directing the respondent to grant freedom fighter pension to the petitioner from discretionary fund of the State Government with 18 % interest p.a. from the date of application.

(b) To direct respondent State to recover the amount of penal interest as well as special exemplary cost from the officer concerned on account of whose callous, negligent and unmindful routine approach, the petitioner is compelled to approach this Hon'ble Court."

3. It is contended by the petitioner that he is a freedom fighter and sustained injury during lathi charge by the police personnel when he was shouting slogans against the Britishers on 10th November, 1942. In the said incident, one of the lathi blow struck to the left side eye of the petitioner and ultimately the petitioner lost the sight/vision of his left eye. The place of incident which was occurred on 10th November, 1942 is also specifically mentioned in para 1 of the petition, i.e. Panch Chakla area, Viramgam. It is relevant to note that in those days, Viramgam was an important Railway junction and number of trains passing through that junction were either checked thoroughly or supervised by the British Agency and especially the trains which were travelling to Saurashtra area ruled by member of Princely State. It is submitted that to appreciate the sacrifice the youth surrendered for the freedom fighting movement decided to grant pension by carving out special scheme and undisputedly such pensions are being paid to thousands of freedom fighters throughout the country. According to the petitioner,

there is no specific guideline issued by the State Government for proving the case that freedom fighter has suffered in any other manner during the movement and the State Government has granted family pension to freedom fighters on production of some adequate evidence as to the participation in the freedom fighting movement.

4. The counsel appearing for the parties have taken me through the contentions raised in the petition as well as in the affidavit in reply filed by the State and the rejoinder affidavit submitted by the petitioner. Copy of the scheme is produced on record at page 32 to 36 and relevant portion of scheme is at page 33. It was reasonably established before the authority by certain certificates and the certificate issued by the Associate Professor of the Civil Hospital, Ahmedabad that the petitioner has suffered permanent disablement because of the injuries sustained by him and that too during freedom fighting movement. So he is covered under the criteria and entitled to receive pension as a freedom fighter. Column 6 of the scheme framed by the State of Gujarat is self-explanatory and the amount of pension is also determined under the very scheme. Mr. Kapadia during the course of his oral submission has placed reliance on a decision reported in 1998 (1) G.L.H. 180 Manibhai Nathji Pandya v. Government of India & Anr. and a decision reported in (2001) 8 Supreme Court Cases 15 Gurdial Singh v. Union of India and others and submitted that the case of the present petitioner is covered by the ratio laid down in the above two decisions. It is rightly argued that for determination of eligibility the standard of proof is not that strict as is required in a criminal case. In the present case there are number of documents which were produced before the State Government and now the same are before this Court which clearly establish one fact that the petitioner has a permanent disability and this disability is because of the injury sustained by him in the freedom fighting movement. There are sufficient evidence and other circumstances on record which go to show that the petitioner has lost his one eye because of the injuries sustained by him during lathi charge made when he was shouting slogans during the Quit India Movement, 1942. The resistance put forwarded by the respondent-State in the present petition is not well-founded. Irrespective of the injuries sustained by the petitioner, it can be legitimately inferred that the petitioner is one of the sufferer in freedom fighting movement.

5. It is submitted by Mr. Kapadia that for the purpose of grant of pension to the petitioner, the

relevant date would be the date of application on which he had prayed for the pensionary scheme declared by the State. It is not a matter of dispute that he has prayed for pension under the scheme on 27th December, 1990 and waited for 10 years in pursuing the State Government so that appropriate favourable decision can be taken considering the facts which were placed before the authorities. On 26th February, 2001, the petitioner got issued a legal notice to the respondent and admitted to satisfy the authorities that he is a sufferer and therefore, entitled to pension under the scheme framed by the State Government.

6. It is submitted that the respondent should be directed to pay the amount of pension from the date of application and also should be awarded interest for all the above period. Though the Apex Court in the case of Gurdial Singh (supra) had granted interest at the rate of 12 % to the petitioner, but in view of the totality of the facts and circumstances of the case, I am not inclined to award interest on condition that the Government clears the file regarding the payment of pension to the petitioner as expeditiously as possible and clears up the arrears within 6 to 9 months from today failing which the petitioner can approach this Court afresh reviving this petition and claim the interest at reasonable rate.

7. The petition is therefore allowed in above terms. The respondent-State is directed to accept the claim to grant pension from Discretionary Fund of the State Government to the petitioner from 27th December, 1990 and the appropriate amount as per the scheme be paid to the petitioner and the same should be paid regularly. The State-respondent is further directed to clear the arrears within 6 to 9 months from the date of receipt of writ of this order failing which the petitioner will be entitled to revive this petition for interest at appropriate rate. It is further directed that whoever is found negligent in clearing the arrears payable to the petitioner as directed above may be fastened with the liability of interest personally either by Government or this Court as the case may be. The respondent-State is further directed to start paying regular monthly pension as expeditiously as possible and preferably within two months from the date of receipt of writ of this order.

8. Accordingly the petition is partly allowed. Rule is made absolute to the extent indicated above.

(C.K.Buch, J.)

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